IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO.39 OF 2004

Ritesh Kumar,
Presently lodged in
Central Jail, Aguada,
Sinquerim, Bardez, Goa. ...Appellant

V e r s u s

State of Goa,
as represented by
Officer-In-Charge,
Mapuca Police Station,
Mapuca, Goa. ...Respondent

Mr. Jos Peter D'Souza, Advocate for the Appellant.

Mrs. W. Coutinho, Public Prosecutor for the Respondent.

CORAM : N. A. BRITTO,J

DATE : 27th October, 2005

JUDGMENT:

This appeal is filed by the accused who has been convicted and sentenced under Section 20(b)(ii)(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (the said Act, for short) to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.1,00,000/- (rupees one lakh only), in default to undergo simple imprisonment for one year, by learned Special Judge, N.D.P.S. Court, Mapusa.

2. The facts of the case of the prosecution, as stated by Police Inspector Shri Menezes/Pw.6 is that on 28.12.00 at about 14.05 hrs. while he was attached to Mapusa Police Station, he received specific reliable information that a person of about 22-25 years of age was staying in room no.205 of hotel 'Gaurav' and was having a consignment of charas and that he reduced the said information into writing and gave a copy thereof to Sub Divisional Police Officer Shri Gawas/Pw.7 in his office, and then deputed constable Satodkar to secure the presence of two panch witnesses, and after they were brought namely, Shri Dhawaskar/Pw.3 and Shri Stanley, he briefed them regarding the said information and introduced the other members of the raiding party, and left the Police Station at about 15.20 hrs. alongwith a kit box containing weighing, packing and sealing material, etc. as well as the seal of Mapusa Police Station and met the person sitting at the reception of the said hotel and asked about the location of room no.205 which on reaching there, was found closed from inside, and when the door was knocked, the accused opened the said door and he introduced himself to the accused who gave his name as Ritesh Kumar, son of Parshottam Ram, resident of Kullu, Himachal Pradesh and then told the accused about the receipt of the said information and about he wanting to take the personal search of the accused and the room, and then introduced the members of the raiding party and told the accused that he was free to take the search of the raiding party including the panchas before they could enter the room

but the accused declined the offer, and then he told the accused that he could be searched in the presence of a Gazetted Officer or a Magistrate of his choice, which offer, the accused also declined and then upon search he found Rs.35/- in the T-shirt pocket of the accused and in the right pant pocket, there was a small polythene bag containing six black colour substances, five cylindrical in shape and one ball-shaped, wrapped in cellophane plastic which were weighed and found to be 50 grams and then the same were put back in the same polythene bag, then put in a brown envelope and packed and sealed with the same seal of Mapusa Police Station and the envelope was marked as Exh.2 and signed, and, in the left pant pocket, a pair of silver colour keys with a ring were found which keys the accused stated were of the lock put to his handbag. Thereafter they found in front of the bed a green and blue colour handbag with two front pockets and two side pockets. The front pockets were empty. There was a purse containing a driving licence with a photograph of the accused as well as the name and address of the accused, and there was a lock on the bag which was opened with the keys found in the pant pocket of the accused and in the said bag, beneath the clothes, there was a cardboard wrapped in black plastic and below the said cardboard, there was a cardboard box which was fixed by tapes on all sides and the bag was opened and in the said bag there were black colour substance, cylindrical, ball and round shaped wrapped in cellophane individually and suspected to be charas

which when weighed were found to be 2.23 kgs. and were marked Exh.4 and the cardboard box was also packed and sealed and marked Exh.5. The accused was asked to remove his green colour T-shirt and brown colour pant and was given substitute set of clothes which were lying on the bed and the said clothes of the accused were packed and sealed and marked Exh.7 & 8, and the keys found in the pant pocket were marked Exh.9. On returning to the Police Station alongwith the accused and the seized property, P.I. Shri Menezes/Pw.6 registered an offence vide crime no.249/2000 and effected the arrest of the accused and filed his F.I.R. P.I. Shri Menezes/Pw.6 stated that he handed over the seized property, in all nine items, to the writer H.C. of Mapusa Police Station Shri Mayekar/Pw.8 for safe custody and obtained a receipt from him. P.I. Shri Menezes/Pw.6 stated that he submitted intimation under Section 57 of the Act to the Superintendent of Police (North) and to the Sub Divisional Police Officer, Mapusa, and on the same day he attached the hotel check-in register of the said hotel in the presence of two pancha witnesses namely Shri Collaso/Pw.4 and Vassudev Arabekar and that he made a letter to the Director, Food and Drugs Administration in triplicate, bearing the specimen seal impression of Mapusa Police Station and a covering letter to the Superintendent of Police (CID, CB), Panaji on the same day. P.I. Shri Menezes/Pw.6 stated that on 29.12.2000 ASI Thakur was deputed alongwith the letters to the Superintendent of Police and the Director, Food

and Drugs Administration in duplicate and the sealed envelopes Exh.2 and Exh.4 to the Office of the Superintendent of Police to be handed over the same for onward despatch to the laboratory but the said ASI Thakur returned from the said Office alongwith the said Exh.2 and Exh.4 and the letters and reported that PSI Shetgaonkar/Pw.2 was not available since he was deputed for V.V.I.P. Law and order duty and that he would be available on 2.1.2001 and that the station diary to that effect was made and so also an entry on the muddemal register. He stated that on 2.1.2001 Head Constable Kalangutkar was deputed with the said letters and Exh.2 and Exh.4 to hand over the same in the Office of the Superintendent of Police (C.I.D.), C.B., Panaji and the same were handed over by him. He stated that the report was received with a covering letter from PSI Shetgaonkar/Pw.2 and upon completion of investigation he filed a charge-sheet against the accused.

3. The prosecution examined eight witnesses in all to establish their case. Mahesh Kaissare/Pw.1 is the Junior Scientific Officer who analysed Exh.2 and Exh.4 and found the substances to contain charas; Shri Shetgaonkar/Pw.2 through whom the said attached substances were forwarded to the Office of Food and Drugs Administration; Umesh Dhawaskar/Pw.3 who witnessed the panchanama of search and seizure; Simon Collasso/Pw.4 the witness who was present at the time of

attachment of the register of the hotel; Laxman Das/Pw.5 the son of the owner of the hotel 'Gaurav' and who was present at the time when the accused had checked in in the hotel; Dy.S.P. Arvind Gawas/Pw.7 who was intimated of the receipt of prior information and who was present during the time of the raid as well as to whom a report under Section 57 of the Act was made. Manguesh Mayekar/Pw.8 who received the seized articles subsequent to the raid and kept the same with him in a locker, with keys which were in his exclusive custody, as stated by him.

4. The case of the accused was of denial simpliciter although the accused stated that he was residing in the said hotel with one Haribaba Sharma, and that the accused was not present when the police came to the hotel and the police had arrested the said Haribaba Sharma and thereafter the accused was arrested. The accused stated that it was a false case filed against him.

5. The learned Special Judge, after analysing the evidence produced on behalf of the prosecution came to the conclusion that the prosecution had established its case against the accused beyond reasonable doubt.

6. As can be seen from the evidence of Police Inspector Shri

Menezes/Pw.6, the search and seizure took place on 28.12.2000 and the seized articles Exh.2 and Exh.4 were sent to the Directorate of Food and Drugs Administration on 2.1.2001 and it was stated by P.I. Shri Menezes/Pw.6 and ASI Mayekar/Pw.8 that on 29.12.2000 the latter had handed over the seized articles Exh.2 and Exh.4 to ASI Thakur as per the directions of P.I. Shri Menezes/Pw.6 to be forwarded to the laboratory and the said ASI had returned the said Exhibits stating that PSI Shetgaonkar/Pw.2 was not available and thereafter had handed over to him the said two Exhibits - Exh2 and Exh.4 regarding which he made an entry on the station diary.

7. Shri Peter D'Souza, the learned Counsel on behalf of the accused has made only one submission and that it was doubtful whether the seized articles namely, Exh.2 and Exh.4 were at all given to ASI Mayekar/Pw.8 and that it is quite probable that the said articles were retained by P.I. Shri Menezes/Pw.6 till the same were sent to the Directorate of Food and Drugs Administration to be analysed by the Public Analyst namely, Mahesh Kaissare/Pw.1. Shri D'Souza has submitted that there was no mention made either on Exh.2 or Exh.4 about the crime number nor any muddemal entry number was put on the said envelopes so as to make them identifiable and this inspite of the fact that P.I. Shri Menezes/Pw.6 had obtained a receipt – Exh.32 from ASI Mayekar/Pw.8

with crime number 249/2000, and, in the absence of the crime number having been put on the said envelopes Exh.2 and Exh.4, it could not be said that the articles which were allegedly seized from the accused were the same articles which were tested or analysed in the laboratory by Mahesh Kaissare/Pw.1. Shri D'Souza has submitted that there was no explanation as to the delay in despatching the seized articles for analysis and if at all an attempt was made on 29.12.2000, then the said ASI Thakur with whom they were sent had not been examined. Shri D'Souza has therefore submitted that in the absence of any explanation from P.I. Shri Menezes/Pw.6 as regards the delay of sending articles of about 4 days it has got to be inferred that the said articles Exh.2 and Exh.4 had remained with P.I. Shri Menezes/Pw.6 for 4 days and although this lacuna was known to the prosecution at the time of filing of the charge-sheet, the prosecution chose not to provide any explanation. Shri D'Souza has submitted that the facts stated by the prosecution show that there was a reasonable possibility that the seized articles Exh.2 and Exh.4 had remained with P.I. Shri Menezes/Pw.6 till they were sent to the laboratory for analysis and thus could have been tampered with, and in such a situation the learned Special Judge gave a benefit of doubt to the prosecution rather than to the accused.

8. I have given my thoughtful consideration to the submissions made on behalf of the accused by learned Advocate Shri D'Souza, but in my

view, the same cannot be accepted. As already seen and as far as this limited controversy raised in this appeal is concerned, P.I. Shri Menezes/Pw.6 stated in his evidence that he had handed over the seized articles to writer Head Constable of Mapusa Police Station Shri Mayekar/Pw.8 and had obtained a receipt from him which was produced at Exh.32. He also stated that on 29.12.2000 PSI Thakur was deputed alongwith the letters to the Superintendent of Police and the Directorate of Food and Drugs Administration with the sealed envelopes Exh.2 and Exh.4, to the Office of the Superintendent of Police, CID, CB, Panaji, to be handed over the same for onward despatch to the laboratory and that ASI Thakur returned from the office of the Superintendent of Police with the said letters as well as Exh.2 and Exh.4 and reported that PSI Shetgaonkar was not available as he was deputed for VVIP duty and that he would be available on 2.1.2001 and that a station diary to that effect was made and so also an entry on the muddemal register. The extract of station diary was produced at Exh.35. ASI Mayekar/Pw.8 has confirmed that he was attached to Mapusa Police Station as writer ASI and that on 28.12.2000 at about 19.00 hours, P.I. Shri Menezes/Pw.6 had handed over to him the said articles including a sealed envelope with 50 grams of suspected charas and another sealed envelope stated to contain 2.23 kilos of black substances suspected to be charas and that he had issued a receipt to P.I. Shri Menezes/Pw.6 namely, Exh.32 and that he entered the said 9 sealed envelopes on the

register under no.63 and on 29.12.2000 he handed over the said two sealed envelopes namely, Exh.2 and Exh.4 to ASI Thakur as per the directions of P.I. Shri Menezes/Pw.6 to be forwarded to the laboratory for analysis and he made an entry to that effect and obtained the signature of ASI Thakur on the muddemal register, extract of which was produced at Exh.34 colly. He also stated that on the same day ASI Thakur returned to the Police Station with the said letters and the said Exhs.2 and 4 and reported that the Scientific Assistant, then PSI Shetgaonkar was not available and handed over back to him the said envelopes and he made an entry at Serial. no.65 on the muddemal register, extract of which was also produced and that on 2.1.2001 the said two envelopes were handed over to Head Constable Kalangutkar as per the instructions of P.I Shri Menezes for forwarding the same to the laboratory for analysis. PSI Shetgaonkar/Pw.2 has confirmed that on 2.1.2001 he received letters nos.12235 and 12236 of 2000 both dated 28.12.2000 addressed to the Director of Food and Drugs Administration in two copies having specimen seals with inscription of Police Inspector, Mapusa Police Station alongwith two sealed envelopes, the small stated to be having 50 grams of charas and the big stated to be having 2.23 kilos of charas concerned in crime no.249/2000, etc. He stated that he acknowledged the receipt of the letters and the envelopes on Exh.10 and thereafter after keeping the said envelopes in his steel cupboard he inwarded the said letters and forwarded the same namely, the sealed

envelopes and one copy of the forwarding letter addressed to the Director of Food and Drugs Administration by their office letter No. 37/2001 dated 2.1.2001 signed by the Additional Superintendent of Police and that on 1.3.2001 he received intimation from the said Director informing that the samples were analysed and he collected the balance quantity on 2.3.2001 and forwarded the same to the Police Inspector, Mapusa Police Station under his letter no.1028/2001 which was signed by him and which he produced at Exh.11. It is contended on behalf of the accused that in the absence of examination of ASI Thakur regarding what transpired on 29.12.2000, what has been stated by P.I Shri Menezes/Pw.6 and ASI Mayenkar/Pw.8 is hear-say and could not be accepted. In my view, at the relevant time P.I. Shri Menezes/Pw.6 and ASI Mayekar/Pw.8 were the Officer in charge of the Police Station and the writer ASI respectively and it is quite probable that the said ASI Thakur after being sent to the Office of the Superintendent of Police came and reported to both of them that the Scientific Assistant namely, PSI Shetgaonkar was not available and therefore such evidence cannot be treated as hear-say. In any event, a contemporaneous record of sending the said Exh.2 and Exh.4 and letters through ASI Thakur was made not only on the station diary but also on the muddemal register and that goes a long way to corroborate the versions of P.I. Shri Menezes/Pw.6 and ASI Mayekar/Pw.8. Police Officers need not be treated in each and every case as persons unworthy of credit and their

evidence cannot be discarded only because they are Police Officers. In other words, the statements made by Police Officers as witnesses are entitled to the same weight as statements made by other witnesses unless they are shown to be improbable in given circumstances. In the case at hand, the evidence of P.I. Shri Menezes/Pw.6 as well as ASI Mayekar/Pw.8 inspires confidence because what has been stated by them has been duly substantiated by contemporaneous entries made on the station diary as well as the muddemal register. In any event, it was categorically stated by ASI Mayekar/Pw.8 that the seized articles were kept by him in his locker under keys which were in his custody. Therefore the ratio of the case of **Man Bahadur v. State of Goa (2004 Drugs Cases (N) 234)** as well as **Rajesh J. Awasthi v. State of Goa (2004 Drugs Cases(N) 322)** would be inapplicable. These were the cases where the seal and seized article had remained with the same Officer. As far as identification of the said articles Exh.2 and Exh.4 is concerned, ASI Mayekar/Pw.8 did state that crime numbers were put on the said parcels/envelopes but immediately corrected himself and stated that none of the said nine parcels bore a crime number. It has been contended on behalf of the accused that the prosecution ought to have re-examined ASI Mayekar/Pw.8 on that aspect of the case, but it appears to me that his first statement was a mere slip of tongue and he corrected himself by stating that none of the said nine parcels/envelopes bore a crime number. A slip of the tongue always is no mistake of the mind.

In fact, it is nobody's case that at any time the crime number was written either on Exh.2 or Exh.4 or for that matter the other envelopes/parcels, but an article need not be identified only on the basis of a crime number or some other number given to it. The evidence produced by the prosecution both oral and documentary clearly shows that Exh.2 had written on it "attached a small polythene bag containing six pieces of black substances weighing 50 grams suspected to be charas ... from the person of accused Ritesh Kumar, son of Parshottam Ram". A similar endorsement was written on Exh.4. This is corroborated by Mahesh Kaissare/Pw.1 who analysed the contents of the said envelopes and who has recorded the description of the said envelopes on the report prepared by him and produced at Exh.8. In other words, though the said two envelopes Exh.2 and Exh.4 did not have crime number written on them or any other number, the fact remains that they could be identified with reference to the weight and name of the accused having been written on the same. In the case at hand, the evidence produced by the prosecution both oral and documentary shows that P.I. Shri Menezes/Pw.6 soon after the seizure handed over the seized articles to ASI Mayekar/Pw.8 who kept the same in his locker and under his key till they were despatched for onward transmission to the laboratory on 2.1.2001 except on 29.12.2000 when they were sent with ASI Thakur but could not be delivered in the absence of PSI Shetgaonkar/Pw.2 in the Office of the Superintendent of Police. PSI Shetgaonkar/Pw.2 has not referred to

the coming of ASI Thakur obviously because in case he was absent, he could not have known as to who had come and who had not come to meet him as he was absent. In my view, the evidence led by the prosecution leaves no room for doubt that there was any scope to interfere with the sample by P.I. Shri Menezes/Pw.6 because soon after the seizure, the sample had remained in the custody of ASI Mayekar/Pw.8 till it was despatched to the laboratory. The procedures adopted in this case regarding the seizure and its custody till the seized articles Exh.2 and Exh.4 were despatched to the laboratory has left no scope for inteference with the said Exhibits. There is no room for suspicion at all.

9. That takes us to the weight of Exh.2 and Exh.4. As per P.I. Shri Menezes/Pw.6 as well as Dhawaskar/Pw.3 and the panchanama, the weight of Exh.2 when it was weighed, it was 50 grams and Exh.4 was 2.23 kgs. When Exh.2 was weighed by Mahesh Kaissare/Pw.1, he found it to be 46.4 grams and Exh.4 to be 2.20 kgs. In other words, the evidence of Mahesh Kaissare/Pw.1 shows that there was a decrease in weight of Exh.2 by 3.6 grams and Exh.4 by 30 grams respectively. Regarding this short-fall in weight, there is no cross-examination done on behalf of the accused nor any explanation given by the prosecution. Learned Public Prosecutor Ms. Coutinho has placed reliance on a judgment in the case of **Hilal Ahmed v. State of Goa v. State of Goa (2002(2) Goa L.T. 360)**

wherein it was observed as follows:

> "The difference in weight is marginal i.e. 15 grams. The difference in weight can be attributed to the balance used by P.W.1, Mahesh Kaissare, which must be sophisticated and sensitive balance. In view of the difference in weight, I have examined the evidence carefully to rule out the possibility of the samples having been tampered with."

10. That was a case where there was reduction from 300 grams of charas to 285 grams of charas. In the case at hand the reduction is from 2.23 kgs to 2.20 kgs. only. In the case of **M.V. Dharman v. State of Kerala (2003 CRI. L.J. 1586)** ganja seized was sent for chemical analysis after six months and there was a loss in weight of the sample of 0.63 grams and it was observed that it could be presumed that the said loss was due to the loss of moisture from the sampled ganja and as such was not a suspicious circumstance. It is said that charas are made by rubbing hands through flowers of cannabis plant which is a long tedious work and in that process it produces resin which gets stuck to the palms and faster the process, the lower is the quality of charas obtained. Since the prosecution has produced evidence which leaves no room for suspicion that there was any scope to interfere with the sample, the only inference which could be drawn as

regards the short-fall in weight is that, it is either due to the fact that it was weighed by Mahesh Kaissare/Pw.1 on a more sensitive or accurate scale than the one used by P.I. Shri Menezes/Pw.6 and also to some extent due to loss of moisture or both as Exh.2 and Exh.4 were weighed in the laboratory after a period of little over one and a half month. The investigations and procedures followed in this case appear to be quite foolproof so as not to create any doubt regarding the veracity of seizure of charas from the accused.

11. In my view, the prosecution had proved its case beyond reasonable doubt against the accused and no fault can be found with the conviction and sentence imposed upon the accused. I find there is no merit in this appeal and accordingly the same is hereby dismissed.

N. A. BRITTO,J

/vpf.